UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 09-10532-GAO

ALICIA LUGO, JONATHAN DELAROSA, and CHRISTOPHER DELAROSA,
Plaintiffs,

v.

PAUL MacMILLAN, in his individual and official capacity, MAURICE AGUILER, in his
individual and official capacity, JOSEPH CERULLO, in his individual and official capacity,
RYAN SHAFFER, in his individual and official capacity, CARMEN PURPORA, in his
individual and official capacity, SHAWN CONWAY, in his individual and official capacity,
Defendants.

OPINION AND ORDER
March 15, 2010

O'TOOLE, D.J.

The defendant, Officer Ryan Shaffer of the Lawrence Police Department, has moved to

dismiss the two counts against him under Federal Rule of Civil Procedure 12(b)(6). The motion

stands unopposed.[1]

Count III raises a state law claim of abuse of process. The complaint alleges that Officer

Shaffer sought a second and successive criminal complaint charging the plaintiff, Alicia Lugo,

with animal cruelty. However, there are no allegations that he did so with the "ulterior or

illegitimate purpose" necessary to state a claim for abuse of process. See Gutierrez v. Mass. Bay

Transp. Auth., 772 N.E.2d 552, 563 (Mass. 2002).

Count IV raises a state law claim of intentional infliction of emotional distress based on

the same facts, which fails for the same reasons. Because there are no allegations that Officer

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[1] Officer Shaffer's motion to dismiss is untimely by 120 days. See Fed. R. Civ. P. 12(a) (providing twenty days after service to respond to a complaint). Because the motion is unopposed, however, the Court reaches the merits.

Shaffer sought the second and successive criminal complaint for an improper purpose (as opposed to an honest mistake), his actions cannot be considered "extreme and outrageous." See Agis v. Howard Johnson Co., 355 N.E.2d 315, 318-19 (Mass. 1976).

For the foregoing reasons, Officer Shaffer's Motion to Dismiss (dkt. no. 36) is GRANTED. Counts III and IV are dismissed as to him.

It is SO ORDERED.

/s/ George A. O'Toole, Jr.
United States District Judge